

EMPLOYER STATUS DETERMINATION
Trans-Texas Rail Shop

This is the decision of the Railroad Retirement Board with regard to the coverage of Trans-Texas Rail Shop (TTRS) under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

According to information supplied by Mr. Harold T. Schroeder, owner of TTRS, TTRS, a Texas corporation, is a sole proprietorship, which began operations in December of 1996. According to Mr. Schroeder, TTRS' relationship with the railroad industry is to refurbish and repair freight cars by providing wreck repair, regular maintenance, truck rebuilds, A/C rebuilds, generator rebuilds, install glass, and heating and air conditioning. A substantial portion of the repair work performed by TTRS is on equipment owned or leased by Union Pacific, CSX Transportation, Norfolk Southern, Canadian National and Amtrak. Mr. Schroeder stated that car repair services performed for these railroads represents approximately 70% of the total business time of TTRS and accounts for 100% of the total business revenue. Mr. Schroeder stated that TTRS has no employees, but uses lease employees provided by Wallace Brumley and Associates. None of these employees work in positions related to business connected with the rail carriers and none of these employees work on property owned by a railroad, according to Mr. Schroeder.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b), contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. 3231.

TTRS is clearly not a carrier by rail. However, there is no doubt that the service being performed by TTRS for the various railroads is a service in connection with railroad transportation. See Livingston Rebuild Center, v. Railroad Retirement Board, 970 F. 2d 295 (7th Cir. 1992). The determination of whether TTRS is covered as a rail carrier affiliate thus depends on whether it is under common control with a rail carrier. Mr. Schroeder is the sole owner of TTRS. There is no evidence to show that TTRS is owned or controlled by a rail carrier or under common control with a rail carrier employer. TTRS is not under common control with any of the rail carriers for whom it performs mechanical repair services. Therefore, despite the fact that it clearly performs a service in connection with railroad transportation, TTRS cannot be found to be a covered employer under the Acts.

For the reasons explained above, the Board finds that TTRS is not an employer subject to the Acts administered by the Board.

Original signed by:

Michael S. Schwartz

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